IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 402 of 1996(F)

O.P(MV).NO.911/1992 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MAVELIKARA.
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APPELLANT/CLAIMANT:

T. SURESH, SON OF THEVAN,
PAZHAYAKATHU THEKKETHIL,
MENAMPALLY, PUTHIYOOR.

BY ADV. SRI.K.SASIKUMAR.

RESPONDENTS/RESPONDENTS:
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1. **JOSEPH, SON OF STEPHEN,**
   MALAKADAVIL VEETTIL,
   PANAMPALAM, ARPUKARA,
   KOTTAYAM.

2. **JOHN CHERIAN, KOCHUKALEEKA,**
   COLLECTORATE.P.O.,
   KOTTAYAM.

3. **THE NEW INDIA ASURANCE CO., LIMITED,**
   BRANCH OFFICE, KANJIKUZHY,
   KOTTAYAM.

BY ADV. SRI.P.V.MADHAVAN NAMBIAR FOR R3,
SRI.STEPHEN JOY IDICULA FOR R2.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.402 OF 1996

Dated 7th June, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with an accident at the age of 25 as a result of which he sustained serious injuries. He claimed a compensation of Rs.1,50,000/=. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. However, only Rs.31,000/= was awarded as compensation. Only quantum of compensation is disputed in this appeal.

2. According to the appellant, he was a tutor in a tutorial college and his monthly income was Rs.2,150/=. Ext.A5 certificate shows that he was getting Rs.500/= from a coaching centre and Ext.A7 shows that he was getting Rs.1,650/= as tuition fees. The Tribunal did not accept the same. Appellant is a graduate. The Tribunal has assessed Rs.1,000/= as the monthly income. Even for a non-earning person, monthly income is fixed as Rs.1,250/= (Rs.15,000/= per year) in the second schedule. Of course, the accident occurred in 1991, prior to the framing of the second schedule. However, the appellant is a graduate and earning person and

Exts.A5 and A7 certificates are not seriously challenged. In the above circumstances, at least Rs.1,250/= should be fixed as the monthly income. With regard to his medical treatment and injuries, Tribunal considered the same at paragraphs 8 and 9 and found as follows:

> "8. Ext.A3 is the wound certificate relating to the petitioner. It shows the following injuries (1) Abrasion left side nose 2cm. x 1cm. in the face. (2) Fracture, right clavicle present. (3) Lacerated injury right forearm near elbow joint in the outer aspect 3 cm x 2 cm x 1 cm deep.
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> 9. Ext.A9 is the discharge card issued from the Medical College Hospital, Kottayam where the petitioner was treated for his injuries. It shows that the petitioner was treated there as an inpatient from 23.9.1991 till 13.10.1991. This document also says that in addition to the fracture of the clavicle the petitioner had also suffered fracture of his 4th and 5th ribs. Ext.A10 is the medical certificate issued from the same hospital. It too gives the details given by Ext.A9 document. This document says that intercostal drainage tube was applied on 28.9.1991 and was removed on 5.10.1991. Ext.A11 is the O.P.ticket issued to the petitioner. So too is Ext.A12. Ext.A13 is a certificate issued by Dr.Muhamed Rafeek. It refers to the injuries sustained by the petitioner and the treatment given to him. After examining the petitioner on 2.2.1993 and noting certain infirmities the doctor assesses the permanent disability of the petitioner at 14%."

However, no scientific method was used for calculating compensation and only Rs.10,000/= was awarded for permanent disability and loss of earning capacity. Even though qualified doctor of the Medical College Hospital certified 14% disability, the Tribunal did not take it into account for calculating compensation. We are of the opinion that considering the disabilities at least 10% disability can be taken into account. Taking second schedule for guidance, 17 is the apt multiplier. If that be so, compensation payable for permanent disability and loss of earning power will be Rs.1,250 x 12 x $\frac{10}{100}$ x 17 = 25,500/=. The Tribunal has awarded only Rs.10,000/= for permanent disability. Therefore, appellant will be entitled to an additional amount of Rs.15,500/= for loss of earning capacity and consequences of disability. The certificates produced will show that he was treated as inpatient for about 20 days and for another three months also he was under treatment. Intercostal drainage tube was applied and two operations were done. However, for bystander's expense and treatment expense the Tribunal awarded only Rs.1,500/=. We are of the opinion that at least Rs.5,000/= ought to have been granted under that head. Therefore, the appellant is entitled to an additional amount of Rs.3,500/= as treatment expenses. For loss of actual earnings for three months

the Tribunal has given Rs.3,000/=. Since we have taken Rs.1,250/= as the monthly income, he is entitled to Rs.750/= more on that count. It is submitted that only Rs.7,500/= is granted for pain and suffering even though it was found that he was put on drainage tube, he has suffered excruciating pain there and there was fracture of ribs also. However, since the accident occurred in 1991, we are not enhancing the above. Thus, total additional compensation payable will be Rs.19,750/=. The above amount of Rs.19,750/= should be deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, with 8% interest from the date of application till the date of deposit. On deposit of the amount, the appellant is free to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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